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opinion

ATTORNEY-GENERAL

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CONCORD, N.H.

Mr. James J. Barry, Commissioner  
Department of Public Welfare  
State House Annex  
Concord, New Hampshire

Dear Mr. Barry:

This is in reply to your letter of March 17, 1958, in which you requested our opinion as to the legality of a signature on a certain application for aid to dependant children. You advise that the applicant in question has two children by a former husband from whom she is separated and two children by the man with whom she has been living in "common law relationship" for several years and whose name she has taken. You further advise that two of the children are known in the community by the name of the "common law husband".

Your specific question is whether, in the absence of any official action on the part of the applicant for a change of name in Probate Court, it is lawful for her to use her "common law husband's" name on the application.

We find no New Hampshire statutory or case law prohibiting the use of an assumed name in such circumstances and it is our opinion that in the absence of fraud, or any question as to the identity of the applicant as the mother of the children for whom aid is sought, the use of her assumed name on the application is not prohibited. For your information we are setting forth below certain statements of the general law bearing on the subject.

"It is merely a custom for persons to bear the name of their parents; hence, in the absence of a statute or judicial adjudication to the contrary, there is nothing in the law prohibiting a person from taking or assuming another name, so long as he does not assume a name for the purpose of defrauding other persons through a mistake of identity. In other words, a contract or obligation may be entered into by a person under any name he may choose to assume. The law is chiefly concerned with the identity of the individual, and when that is ascertained and clearly

Mr. James J. Barry, Commissioner

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established, the act will be binding on him and on others." 38 Am.Jur., 600, Name s. 11

"In the absence of statutory restriction, one may lawfully change his name without resort to any legal proceedings as long as it does not interfere with the rights of others and where it is not done for a fraudulent purpose. The name thus assumed will constitute his legal name for all purposes just as much as though he had borne it from birth or as though it had been provided for by a court order . . ." 65 C.J.S. 19, Names, s. 11.

Sincerely yours,

George T. Ray, Jr.  
Assistant Attorney General

GTR/lit